

## **REMARKS**

Claims 1-14 were pending in the application.

Claims 1-13 are amended to recite the claimed subject matter using vocabulary more commonly used in U.S. practice. Claim 14 is canceled. No new matter is added.

The specification is amended to include headings recommended by the USPTO, including cross-reference to related applications.

Claims 1-13 are now pending in the application.

### **Claims Rejections – 35 U.S.C.112, second paragraph**

Claim 14 is rejected under 35 U.S.C. 112, second paragraph, and 35 U.S.C. 101 for reciting a use claim with no method steps. The Examiner's rejection has been carefully considered. Claim 14 is canceled.

### **Claims Rejections 35 U.S.C. 103**

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laurent et al. (US 2002/0046431 A1) in view of Jacquet et al. (US 4,381,919).

The rejection admits that Laurent does not teach or suggest the weight ratios of the ingredients recited in claim 1. The rejection also limits the teachings of Laurent to a method of making dyeing compositions "similar to" those presently claimed ([0494] in Laurent).

The rejection asserts that Laurent suggests the use of fatty amides and fatty alcohols and that Jacquet teaches a composition comprising cetyl alcohol and mono- or di-ethanolamides derived from lauric acid (col. 7, lines 6 and 40-46).

The rejection asserts that it would have been obvious for one of ordinary skill in the art to modify the dying composition of Laurent by incorporating cetyl alcohol and fatty amides as taught by Jacquet to arrive at a composition containing the same ingredients as those recited in the present claims, but not in the claimed ratios. The motivation asserted for this combination is that Laurent suggests the use of fatty alcohols and fatty amides. The rejection asserts that one of ordinary skill in the art would have expected the resulting composition to have similar properties to those claimed, absent unexpected results.

Finally, to arrive at the presently claimed invention, the rejection asserts that it would have been obvious to one of ordinary skill to formulate a dying composition comprising oxidation dyes and/or direct dyes, fatty alcohols, alkanolamides, and alkoxyated fatty alcohols with the weight ratio as claimed. The motivation asserted for producing the particular ratios of components presently claimed is optimization in order to get the maximum effective amounts of these ingredients. Again, the rejection asserts that one of ordinary skill in the art would have expected the resulting composition to have similar properties to those claimed, absent unexpected results.

I. Applicant argues that claims 1-14 are patentable over Laurent in view of Jacquet because the optimization asserted as obvious in the rejection could not have led to the presently claimed invention.

The presently claimed dye carrying composition is disclosed in the present specification as creating a stable nacreous (i.e. iridescent, pearlescent) luster in hair colorants (page 1, first paragraph and the examples) without adding a nacreous luster-imparting agent (page 1, paragraphs 4 and 5). The present disclosure makes clear that the particular combination of ingredients and their relative amounts, as recited in the

present claims, are responsible for the stable nacreous luster obtained when the presently claimed composition is used. It is therefore clear that any optimization of the ingredients recited in the present claims could only have resulted from an optimization that was targeted toward achieving stable nacreous luster in dyed keratin fibers.

Neither Laurent nor Jacquet teach or suggest compositions that provide a stable nacreous luster when used to dye hair. Consequently, one of ordinary skill in the art would have had no motivation to modify the teachings of to include nonessential ingredients taught by Jacquet and to then optimize the modified composition to arrive at the presently claimed ratios. In other words, a general optimization, absent the desire to achieve a stable nacreous luster, could not have led to the presently claimed ratios of ingredients.

II. Applicant argues that claims 1-14 are patentable over Laurent in view of Jacquet because one of ordinary skill in the art, at the time the invention was made, would not have been motivated to combine the cited references in the manner asserted in the rejection.

Laurent teaches an oxidative dye composition that solves problems associated with dye oxidation that is too rapid (paragraphs [0016] and [0017]). The primary teachings of Laurent is that the addition of a specific combination of materials into a composition that combines an oxidation dyeing composition and at least one oxidizing agent develops in color much less quickly, "thus reducing the premature oxidation of the oxidation dyes."

Jacquet teaches quaternized polymers that are useful in cosmetics applied to the skin and the hair (column 4, lines 44-48, and column 5, lines 8-13). The polymers facilitate untangling of hair, do not make wet hair feel sticky, do not make dry hair feel heavy, and facilitate bouffant hair styles (column 5, lines 14-22). According to column 5, lines 28-34, the polymers "also exhibit, in particular, great usefulness when they are employed as pretreating agents, notably before an anionic and/or non-ionic shampooing

*or before oxidation dyeing, followed by an anionic and/or non-ionic shampooing. When so employed, the thus treated hair is particularly easy to comb and has a very soft feel."*

Jacquet emphasizes the particular utility of the quaternized polymer as a pretreatment but emphasizes no other utility involving hair. Rather, the incorporation of the quaternized polymers of Jacquet into other compositions for hair takes the form of lists including shampoos, styling gels and creams, setting lotions, permanent waving compositions, anti-dandruff lotions, hair restructuring compositions, hair lacquer compositions and hair dying compositions (column 5, lines 38-46).

It is clear that one of ordinary skill in the art, reading Laurent and Jacquet in context of their full teachings, would most likely have been motivated to modify the slow oxidation dye composition of Laurent by using a pretreatment containing the polymers according to Jacquet to protect the hair. One may argue that of ordinary skill might even have modified the Laurent's composition to contain the polymers taught by Jacquet. Such a modification, however, would not contain the compounds recited in the present claims.

The references do not support any reason for modifying Laurent's slow oxidation dye composition to include cetyl alcohol and mono- or di-ethanolamides from among a long list of ancillary ingredients to produce a product similar to that presently claimed. The only motivation for selecting the particular components chosen from Jacquet to combine with Laurent and then optimize is found in the present disclosure.

No evidence is provided for the assertion that an unspecified optimization would have been directed toward the properties of the composition recited in the rejected claims or that the asserted optimization would have resulted in the ratios of specified compounds recited in the rejected claims.

III. Applicant argues that claims 1-14 are patentable over Laurent in view of Jacquet because the modification of Laurent according to Jacquet asserted in the rejection

would have led to a hair coloring composition that is different from that recited in the rejected claims.

The composition taught by Laurent contains at least one compound selected from oxyalkenated fatty alcohols and glycerolated fatty alcohols and at least one hydroxylated solvent having a molecular weight of less than 250 (paragraphs [0022] – [0024]). In other words, oxyalkenated fatty alcohols are not required.

Column 7, lines 1-10 and 40-49, in Jacquet teaches that a hair dying cream containing quaternized polymer can be formulated:

The creams can also be formulated starting with natural or synthetic alcohols having between 12 and 20 carbon atoms in admixture with the emulsifiers.

Representative fatty alcohols include, in particular, alcohols derived from the fatty acids of copra, myristyl alcohol, cetyl alcohol, stearyl alcohol, arachidyl alcohol, isostearyl alcohol, hydroxystearyl alcohol, oleyl alcohol and ricinoleyl alcohol, in an amount ranging generally between 1 and 60 weight percent and preferably between 5 and 30 percent by weight.

Further, these creams can contain various conventional adjuvants such as fatty amides.

Representative fatty amides include, preferably, mono- or di-ethanolamides, and amides of the acids derived from copra and from lauric acid or from oleic acid, in an amount ranging generally between 0 and 15 weight percent.

These compositions can also contain sequestering agents such as ethylene diamine tetracetic acid or its salts, thickening agents, perfumes and the like.

The rejection asserts that it would have been obvious to modify the dying composition of Laurent by incorporating cetyl alcohol and fatty amides as taught by Jacquet. As can be seen, fatty alcohols can be used in a preferred amount of between 5 and 30 percent by weight and fatty amides may be used as adjuvants and can be present in an amount of from 0 to 15 weight percent. Consequently, according to the teachings of Jacquet, there is nothing obvious about using specified ratios of fatty

amides, fatty alcohols, and fatty alkoxylates in combination. The lack of a teaching, suggestion, or direction to one of ordinary skill to make a composition containing specified ratios of the compounds is not remedied by an unsupported assertion that optimization would have led to the presently claimed specified ratios, particularly since the compounds are nonessential to both of the cited inventions.

### **Conclusion**

The application, in its amended state, is believed to be in condition for allowance. Action to this end is courteously solicited. Should the Examiner require or consider it advisable that the specification and/or claims be further amended or corrected in formal respects to put this case in condition for final allowance, then it is requested that such amendments or corrections be carried out by Examiner's Amendment and the case passed to issue.

Should the Examiner have any further comments or suggestions, the undersigned would very much welcome a telephone call in order to discuss appropriate claim language that will place the application into condition for allowance.

Respectfully Submitted,

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